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**IN THE UNITED STATES DISTRICT COURT
 FOR THE
 NORTHERN MARIANA ISLANDS**

HOMAYAN KABIR,

Plaintiff,

v.

**CNMI PUBLIC SCHOOL SYSTEM, and
 JONAS BARCINAS**

Defendants.

) **No. CV 07 0034**

) **MOTION TO DISMISS
 OF DEFENDANT JONAS BARCINAS**

) **Hearing Date: _____**

) **Time: _____**

) **Judge: Munson**

COMES NOW Defendant Jonas Barcinas, who would now present to the Court this Motion to Dismiss Plaintiff's Complaint in the above styled and numbered cause.

As grounds for the Motion, Movant would show the Court the following:

I. STANDARD

In considering a motion to dismiss, the Court must regard plaintiff's well-pleaded facts as true and admitted. *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1963 (1974). The Court may also draw reasonable inferences from the facts pleaded, although the Court is not required to strain to find such inferences. *id.* While the court generally must assume factual allegations to be true, it need not assume the truth of legal conclusions cast in the form of factual allegations. *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 (9th Cir. 1986), *cert. den.* 479 U.S. 1009, 107 S.Ct. 650, 93 L.Ed.2d 705. Dismissal is proper where the complaint lacks a cognizable legal theory or where the complaint presents a cognizable legal theory yet fails to plead essential facts under that theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984).

II. ARGUMENT AND AUTHORITIES

A. Supervisors and co-workers may not be sued under Title VII

Plaintiff's First Cause of Action states a claim for unlawful employment practices under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* This cause of action is pleaded against all defendants. Complaint, ¶¶ 13-16.

The Ninth Circuit does not recognize a separate cause of action against supervisors or co-workers under Title VII. *Craig v. M&O Agencies, Inc.*, 496 F.3d 1047, 1058 (CA9 2007) ("We have long held that Title VII does not provide a separate cause of action against supervisors or co-workers.") *See also Holly D. v. Cal. Inst. of Tech.*, 339 F.3d 1158, 1179 (CA9 2003); *Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185, 1189 (CA9 1998); *Miller v. Maxwell's Int'l, Inc.*, 991 F.2d 583, 587-88 (CA9 1993).

Under the above authorities, Plaintiff's First Cause of Action, as pleaded against Defendant Barcinas, must be dismissed.

B. Plaintiff's Fourth Cause of Action should be Dismissed.

In his Fourth Cause of Action, Plaintiff pleads the common law tort of assault and battery against Defendant Barcinas. Complaint, ¶ 22. This state law claim is pleaded pursuant to the Court's supplemental jurisdiction under 28 U.S.C. § 1367. If jurisdiction is exercised, Federal courts apply the substantive law of the state in which they sit to adjudicate such claims. *Bird v. Lewis & Clark College*, 303 F.3d 1015, 1023, (CA9, Or., 2002).

Defendant Barcinas has filed a contemporaneous Motion to have the CNMI substituted as the defendant for the Fourth Cause of Action. Defendant Barcinas incorporates and adopts the Motion to Substitute CNMI as Defendant as to Plaintiff's Fourth Cause of Action, and the Memorandum in Support of said Motion, as if completely set forth herein.

WHEREFORE, PREMISES CONSIDERED, Defendant Barcinas prays that, upon hearing, the Court enter its Order dismissing the above two causes of action as to Defendant Barcinas, and for such

1 other and further relief as the Court may deem just and equitable.

2 Respectfully submitted,

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4 /s/ David Lochabay
5 David Lochabay
6 Asst. Attorney General
7 Office of the Attorney General
8 Attorneys for Defendant Barcinas

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CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been e-filed this 31st day of January, 2008, with service requested to Joseph E. Horey, O'Connor Berman Dotts & Banes, attorneys for Plaintiff.

/s/ David Lochabay